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bility. That liability arises from the character of the promise, and the interest in the principal contract and the benefit to be derived from it becomes a matter of consideration only as they may serve to determine that character. *Clay v. Walton*, 9 Cal. 328. The vital point in cases of this class is: Was the contract original? *Payne v. Baldwin*, 14 Barbour 570. In order that the promise may be held to be within the statute it is essential that there be a binding and subsisting obligation or liability to the promisee to which the promise is collateral. 151 Ill. 175. The evidence required to change a contract relation between a plaintiff and a third party and to prove a promise to pay the debt of another as a new and original undertaking and not a contract of suretyship, must be clear and satisfactory; otherwise it will fall within the statute. *Haverly v. Mercer*, 78 Pa. 257. A case directly in point is *Diringer v. Moynihan*, 10 N. Y. Supp. 540, which held that a promise by defendant to see that workmen of sub-contractor were paid was a promise to pay debt of another, and, not being in writing, was unenforceable.

CONTRIBUTORY NEGLIGENCE—QUESTIONS FOR JURY.—*CRAUCH VS. BROOKLYN HEIGHTS Ry. Co.*, 129 N. Y. ST. REP. 169.—Plaintiff was injured at a grade crossing while proceeding to defendants' station—*Held*, that the fact that the plaintiff had seen a train approaching and had not waited to see if train would stop at the station, was not, under all circumstances, negligence in law.

It is established universally and beyond a doubt that negligence and contributory negligence are questions of fact for the jury, except in rare cases. *Burns v. Town of Elba*, 32 Wis. 605; *Balt. & Ohio R. R. Co. v. Shipley*, 31 Md. 370. That there are exceptional cases is unquestioned. *Tyson v. Tyson*, 37 Md. 567-581; *Balt. & Ohio R. R. Co. v. Fitzpatrick*, 35 Md. 32. But there is hopeless conflict on these cases. Compare the following: *Butler v. R. R. Co.*, 126 Pa. St. 160; *Lewis v. Balt. & Ohio R. R. Co.*, 38 Md. 588; *Brown v. Barnes*, 151 Pa. St. 562; *Moore v. Westervelt*, 21 N. Y. 103. In some states the question is controlled by the fact that the burden of showing ordinary care is put on the plaintiff. *Alger v. City of Lowell*, 3 Allen 402; *Cramer vs. City of Burlington*, 42 Iowa, 315. But see *Bradwell v. Pittsburg & West End Ry. Co.*, 139 Pa. St. 404; *Brown v. Traction Co.*, 14 Pa. Sup. Ct. 594. For a case where there is no room for doubt see *Balt. City Pass. Ry. Co. v. Wilkinson*, 30 Md. 224.

CORPORATIONS—EMINENT DOMAIN—LEGALITY OF CORPORATE EXISTENCE.—*EDDLEMAN ET UX. v. UNION COUNTY TRACTION & POWER Co.*, 75 N. E. 510 (ILL.). *Held*, that the legality of the existence of a corporation cannot be attacked in condemnation proceedings instituted by it, but only in a direct proceeding by *quo warranto*.

The better rule seems to be as announced in the opinion above. *W. & P. R. Co. v. C. & C. R. & L. Co.*, 114 N. C. 690; *Morrison v. Forman*, 161 Ill. 247; *Niemeyer v. Little Rock Junction Ry.*, 43 Ark. 111. But some courts hold that a *de jure* corporate existence must be shown when it is sought to take property by eminent domain. *In re Brooklyn W. & N. Ry. Co.*, 72 N. Y. 245; *Powers v. H. & L. Ry. Co.*, 33 Oh. St., 429; *Orrich School Dist. v. Dorton*, 125 Mo. 439. *De jure* corporate existence must be set up in actions by a corporation to collect subscriptions made prior to incorporation. *Indiana F. & M. Co. v. Herkimer*, 46 Ind. 142; *Schloss v. Montgomery Trade Co.* 87 Ala. 414. The subscriber may be estopped to attack the corporate existence if he participated in the formation of the corporation. *Bell's Appeal*,